

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHARRON HIGGS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:04CV1479 RWS
)	
EMC MORTGAGE CORP. et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me on plaintiff's motion to amend her complaint by interlineation and defendant US Bank's motion to dismiss. On February 22, 2005, I granted US Bank's motion for more definite statement because plaintiff's complaint failed to allege how US Bank injured plaintiff. Plaintiff's pro se proposed amendment, although untimely, contains specific allegations against US Bank. I will accordingly exercise my discretion and permit plaintiff to amend her complaint by interlineation.

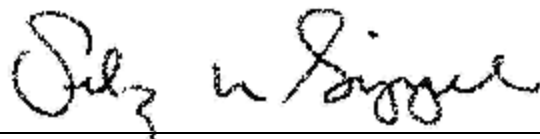
US Bank moves to dismiss plaintiff's complaint for failure to timely respond to its motion to dismiss. Because I granted plaintiff additional time to respond to the motion, however, her response was timely. I will therefore deny US Bank's motion to dismiss on this ground. US Bank alternatively moves to dismiss plaintiff's complaint for lack of specificity. Because plaintiff's amended complaint contains

specific allegations against US Bank, however, this argument for dismissal is now moot. Finally, US Bank claims that plaintiff has failed to state a claim against it. Although US Bank argues that plaintiff should have raised her claims against it in prior bankruptcy proceedings, it offers no legal authority in support of this proposition. Because US Bank failed to properly support its motion to dismiss, the Court cannot conclude at this stage of the proceedings that plaintiff is unable to state a claim against US Bank. For these reasons, US Bank's motion to dismiss will be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to amend by interlineation [#46] is granted.

IT IS FURTHER ORDERED that defendant US Bank's motion to dismiss [#40] is denied.

A handwritten signature in black ink, appearing to read "Rodney W. Sippel", is written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 9th day of December, 2005.